LAW OFFICES OF
GOLDBERG, PREVIANT & COOPER
(PADWAY, GOLDBERG & PREVIANT)
511 WARNER BUILDING
MILWAUKEE 3, WIS

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September 2, 1959

Mr. Frank E. Hamilton, Jr.
Attorney at Law

308 Tampa Street

Tampa, Florida

Dear Frank:

RE: ANHEUSER BUSCH, INC.

Thanks for the material in this matter. I would appreciate it if you will keep me informed of all subsequent developments.

If I can be of any assistance, please let me know.

Very truly

GOLDBERG, PREVIANT & COOPER

DP:ih

By

DAVID PREVIANT

AIR MAIL

101

Telefax WESTERN UNION Telefax

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CALL LETTERS MDY CHARGE TO Int. Bro. Teamsters 2-15-56

ADMINISTRATIVE FILE

Anheuser-Busch Brewing Co.

JOHN WILSON
ANHAUSER BUSCH BREWING CO.
ST. LOUIS, MISSOURI

WOULD APPRECIATE YOUR TELEPHONING ME HERE RELATIVE OUR CONVERSATION AT MY HOUSE TWO WEEKS AGO AS WOULD LIKE ASSIGN SOMEONE TO GO INTO THIS WITH YOU, DEVELOPING ALL DETAILS SO I MIGHT MAKE INTELLIGENT AND EARLY DECISION.

DAVE BECK

dbnw

Send the above message, subject to the terms on back hereof, which are hereby agreed to

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WESTERN UNION
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MDV STRAIGHT PD INT BRO OF TEAS APRIL 20, 1955

ADMIN. FILE

MANNY MOORE, PRES.
L. U. # 270
424 CHARTRES STREET
NEW ORLEANS, LA.

An[illegible] Busch

X

X

REURTEL APRIL 19th. NO PRINTED DECISION ISSUED ON THIS CASE. THE COURT SAID QUOTE THE JUDGMENT IS REVERSED UNQUOTE. THEY CITED THE CASE WEAVER AGAINST ANHEUSER BUSCH DECISION #97 , WHICH YOU HAVE A COPY OF. YOUR WIRE OF APRIL 19th REFERS TO THE CASE OF L. U. # 89 AGAINST THE AMERICAN TOBACCO COMPANY.

ROBERT L. GRAHAM ASS'T
TO THE GENERAL PRESIDENT

RLG:b

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WESTERN UNION

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ROBERT L GRAHAM, ASST TO GENERAL PRESIDENT=
INTL BROTHERHOOD OF TEAMSTERS
100 INDIANA AVE NORTHWEST WASHDC=

RX

DECISION 97 RENDERED MARCH [illegible] 55 RECEIVED AND HAS
BEEN USED IN LITIGATION SUCCESSFULLY THE DECISION
REFERRED TO IN MINE DATED APRIL [illegible] 55 HAS BEEN RENDERED
BY SUPREME COURT ON FOLLOWING MONDAY OR APRIL 4TH
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COURT INJUNCTIONS AGAINST PICKETING PLEASE RUSH=
DANNY MOORE GENERAL DRIVERS AND WAREHOUSEMEN LOCAL 270=

American Tobacco Ex 31640

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WESTERN UNION
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MDV STRAIGHT PD INT BRO OF TEAS APRIL 19, 1955

MANNY MOORE, PRESIDENT
L. U. #270
424 CHARTRES STREET
NEW ORLEANS, LA.

ADMINISTRATIVE FILE

REURTEL SUPREME COURT DECISION. PRINTED COPY OF DECISION NO. 97 - OCTOBER TERM - RENDERED MARCH 28, 1955 SENT YOU CARE OF ABOVE ADDRESS ON MARCH 30, 1955. PLEASE CHECK TO BE SURE IT WASN'T RECEIVED. IF NOT ADVISE, AND WE WILL SEND PHOTOSTATIC COPY.

ROBERT L. GRAHAM, ASSISTANT
TO THE GENERAL PRESIDENT

RLG:b

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WESTERN UNION

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EXECUTIVE VICE PRES INTERNATIONAL BROTHERHOOD OF TEAMSTERS 100 INDIANA AVE WASHDC=

TWO OR THREE WEEKS AGO SUPREME COURT RENDERED DECISION THAT FEDERAL DISTRICT COURT WAS WITHOUT JURISDICTION TO RENDER INJUNCTIVE RELIEF AGAINST STATE COURT ANTI PICKETING INJUNCTION DESIRE COPY OF LAW AS QUICKLY AS POSSIBLE=

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LOCAL ADMIN. FILE

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MANNY MOORE PRES
L. U. # 270 - INT. BRO. OF TEAS.
424 CHARTRES STREET
NEW ORLEANS, LA.

REURTEL DECISION NOT YET AVAILABLE FOR DISTRIBUTION TO PUBLIC. PROBABLY TOMORROW. WILL FORWARD COPY IMMEDIATELY IT IS RELEASED. IN THE MEANTIME REFER TO WALL STREET JOURNAL DATED MARCH 29 PAGE 4. GIVES FAIRLY COMPLETE STORY.

ROBERT L. GRAHAM, ASSISTANT
TO THE GENERAL PRESIDENT

RLG:b

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WESTERN UNION Telefax

MAR 29 1955

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EINAIR [illegible], EXECUTIVE VICE PRESIDENT INTERNATIONAL
BROTHERHOOD OF TEAMSTERS 100 INDIANA AVE NW
WASHDC =

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PENDING IN CIVIL DISTRICT COURT FOR PARISH OF ORLEANS.

HARRY MOORE, PRES GENERAL DRIVERS AND
[illegible] LOCAL 270.

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ADMINISTRATIVE FILE

Anheuser-Busch

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W. Woll.

4 THE WALL STREET JOURNAL, Tuesday, March 29, 1955

Supreme Court

Court Says State Judge Can't Bar Union Action Legal Under T-H Law

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — The Supreme Court took away a little more of the states' power to deal with labor disputes subject to the Taft-Hartley Act.

In an 8-to-1 ruling, the High Tribunal held that state courts can not block union action which is legal under Taft-Hartley on the ground the action is an illegal restraint of trade under state law.

This was one of a handful of important labor and tax decisions handed down by the justices yesterday following a two-week lay-off. In other decisions and actions, the court:

Ruled that a union can't sue an employer in a Federal Court for breach of contract over wage payments to employes.

Held that punitive damages from fraud or antitrust law violations are taxable income.

Declared that a corporation must pay a tax on money it receives from company officers who've made "insider profits" trading in the firm's stock.

Upheld a 1952 Federal Power Commission order requiring Colorado Interstate Gas Co. to reduce its rates by $2.7 million.

Agreed to rule whether a state court can stop a secondary boycott that made a neutral railroad its victim.

Denied Radio Corp. of America a hearing of its contention that a patent antitrust suit brought by Zenith Radio Corp. in Chicago ought to be postponed.

In addition, the court swore in John Marshall Harlan as an Associate Justice to fill the vacancy caused by the death last October of Justice Robert H. Jackson. Justice Harlan took no part in any of the cases decided yesterday.

Involved Anheuser-Busch

The case involving state court jurisdiction in labor disputes grew out of a 1952 strike by an A.F.L. Machinists Union local against the St. Louis brewery of Anheuser-Busch, Inc. The strike was called after the company refused to include in a new collective bargaining agreement a clause providing that repair or replacement of machinery in the firm's plant would be given only to contractors having collective bargaining agreements with the Machinists. The Machinists wanted this clause to prevent a rival A.F.L. Carpenters local from handling the work.

As soon as the strike broke out, Anheuser-Busch filed unfair labor practice charges with the National Labor Relations Board. The board ruled, however, there was no evidence of unfair practices on the union's part and declined to grant the company a hearing.

Anheuser-Busch also got an injunction from a state court in St. Louis on the ground the union's conduct was a "secondary boycott," illegal under both state law and the Taft-Hartley Act. The company also contended the strike was an illegal conspiracy in restraint of trade under Missouri law.

When Missouri's Supreme Court said the strike violated the state's antitrust law and upheld the injunction, the union appealed to the U. S. Supreme Court. The union argued the N.L.R.B. rather than state tribunals had jurisdiction over the dispute.

In an opinion written by Justice Frankfurter, the High Court agreed with the union's version of the law. The decision said in effect that a state court can't cite a state law not involving labor relations — in this case the Missouri antitrust statute — as ground for handling a case it could not handle as a labor case.

"Controlling and therefore superseding Federal power cannot be curtailed by the state even though the ground of intervention be different than that on which Federal supremacy has been exercised," Justice Frankfurter declared.

Mr. Frankfurter noted that the High Court has handed down a whole series of decisions on the question of state vs. Federal jurisdiction in labor disputes. These rulings have held that in most instances, state courts can't act on labor cases involving interstate commerce. The High Tribunal has, however, upheld the right of states to use their "police power" for dealing with labor violence.

Westinghouse Case

The other labor decision involved a suit brought by the Association of Westinghouse Salaried Employes against Westinghouse Electric Corp. The union sought a court order directing the company to grant some 4,000 employes pay withheld from them when they stayed away from work one day in 1951. According to the union, withholding of pay by the company violated a collective bargaining agreement in effect since 1950.

A district court dismissed the suit and the Third Circuit Court of Appeals, to which the union appealed, held that the district court had no jurisdiction over the suit in the first place. The union then went to the U. S. Supreme Court. It argued the union-management wrangle came under the Taft-Hartley Act and, therefore, Federal court jurisdiction.

However, in a 6-to-2 ruling, the High Tribunal held that nowhere in the legislative history of the Taft-Hartley Act did Congress "discuss or show any recognition of the type of suit involved here, in which the union is suing on behalf of employes for accrued wages. Therefore," the court held, "we conclude that Congress did not confer on the Federal courts jurisdiction over a suit such as this one."

Ruling on Punitive Damages Tax

In the punitive damages tax case, the Supreme Court overturned a recent ruling of the Third Circuit Court of Appeals that income from such damages are tax exempt. The appeals court's decision had been challenged by the Federal Government.

In a 7-to-1 decision delivered by Chief Justice Warren, the court held: "Here we have instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion. The mere fact that the payments were extracted from the wrongdoers for punishment for unlawful conduct cannot detract from their character as taxable income to the recipients. Respondents concede, as they must, that the recoveries are taxable to the extent that they compensate for damages actually incurred."

Mr. Warren went on to say the court could find no evidence of Congressional intent to exempt punitive damages as taxable income.

One of the cases involved Glenshaw Glass Co., Glenshaw, Pa., which refused to declare some $324,000 it received as punitive damages in a fraud and private antitrust suit against Hartford Empire Co. The other involved William Goldman Theatres, Inc., Philadelphia, which declined to declare $250,000 in punitive damages it won in an antitrust case against a group of motion picture distributors.

"Insiders Profits" Decision

The court applied this same ruling to affirm lower court decisions which required General American Investors Co., Inc., to pay a tax on money it received from "insider profits."

The Investment Company Act of 1940 and the Securities Exchange Act of 1934 require company directors and officers—so-called "insiders"—to hand over to their firm any profit they make from buying and selling—within a six months period—in their corporation's equity securities. Such profits can be recovered in a suit brought by a stockholder or by the company, but since the law is pretty explicit on the matter, most "insider profits" are passed on voluntarily.

General American, which appealed the lower court rulings, argued that payments of "insider profits" is not—technically speaking—income for a corporation. The firm was paid $170,088.04 in 1948 by a director and an officer who together made that much of a profit by buying and selling the company's stock. The Federal tax collector ruled the firm should have declared this entire sum, minus certain legal expenses.

Colorado Gas Case

The Colorado Interstate Gas case actually involved a technical legal question as to whether a Federal Court of Appeals has the right to "correct" on its own initiative an alleged administrative error not challenged during previous proceedings before the Federal Power Commission.

RCA., Inc

§.6 #12

SUPREME COURT OF THE UNITED STATES

No. 97.—October Term, 1954.

Lloyd Weber, et al., Petitioners, v. Anheuser-Busch, Inc.	On Writ of Certiorari to the Supreme Court of Missouri.

[March 28, 1955.]

Mr. Justice Frankfurter delivered the opinion of the Court.

This case grew out of a dispute between petitioner, the International Association of Machinists (IAM), affiliated with the American Federation of Labor, and the Millwrights, affiliated with the United Brotherhood of Carpenters and Joiners (Carpenters), which in turn was affiliated with the American Federation of Labor, over millwright work being performed for respondent, each union claiming the work for its own members.

Respondent is engaged in the interstate manufacture and sale of beer and other commodities, with its principal place of business in St. Louis, Missouri. Its employees include members of both the IAM and the Carpenters. Respondent has always required a large amount of millwright work to be performed by outside contractors in the expansion of its facilities. After the IAM was certified in 1948 by the National Labor Relations Board as the exclusive bargaining representative of respondent's machinists, respondent executed a collective bargaining contract with the IAM for 1949 which provided in part that when the repair or replacement of machinery was necessary, this work would be given only to those contractors who had collective agreements with the IAM. As a result of protests from the Carpenters, who claimed the same type of work for their own members, the clause was deleted from the 1950 contract between respondent

and the IAM, but it was later reinstated in the 1951 contract. The Carpenters again protested, this time threatening that they would sign no contract with respondent covering those employees who were members of the Carpenters until the clause was deleted from the IAM contract. When the 1951 IAM contract expired and negotiations for a 1952 contract began, respondent refused to agree to the insertion of the clause in the new contract. An impasse was reached in the negotiations, and finally the IAM went on strike.

At the time the strike was called, only one contractor was actually engaged in respondent's millwright work, and the employees of that one contractor were covered by a contract with the IAM.

On April 8, 1952, the day after the strike was called, respondent filed a charge of an unfair labor practice under § 8 (b)(4)(D) of the Taft-Hartley Act against the IAM.[1]

On November 18, 1952, the National Labor Relations Board quashed the notice of a hearing, holding that no "dispute" existed within the meaning of the invoked subsection. The Board reasoned that at the time of the strike, the IAM could not have been requesting the assignment of "particular" work to IAM members, because the IAM was not complaining about the assignment of work by respondent to its own employees, and as to work assigned by respondent's contractors, (1) the IAM had made no demand on those contractors to give their work to IAM labor, and (2) no millwright work performed by respondent's contractors at that time was in fact being performed by other than IAM labor. *District No. 9, International Association of Machinists*, 101 N. L. R. B. 346.

It must be emphasized that the only unfair labor practice charge filed with the Board, and the only one upon

[1] 61 Stat. 140, 29 U. S. C. § 158 (b)(4)(D). The subsection is quoted in footnote 2, *infra*.

which the Board acted, was that prescribed in Subsection (D) of § 8 (b)(4).

In the meantime, on April 19, 1952, after it had filed the charge with the Board but before the Board had acted upon it, respondent sought an injunction against the IAM in the State Circuit Court in St. Louis. In its complaint, respondent alleged that the strike constituted "a secondary boycott under the common law of the State of Missouri," and also was in violation of Subsections (A), (B) and (D) of § 8 (b)(4) of the Taft-Hartley Act[2] and of § 303 (a)(1), (2) and (4) of that same Act.[3] A tempo-

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[2] "It shall be an unfair labor practice for a labor organization or its agents—

. . . . .

"(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; . . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work . . . ." 61 Stat. 140, 29 U. S. C. § 158 (b)(4)(A), (B) and (D).

[3] "(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise

rary injunction issued. On April 30, respondent amended its complaint with the additional claim that the IAM's conduct constituted an illegal conspiracy in restraint of trade under Missouri common law and conspiracy statutes. § 416.010, R. S. Mo. 1949. The temporary injunction was thereupon made permanent on September 30, 1952, some time before the Board, it will be recalled, held that there was no violation of § 8 (b)(4)(D) of the Taft-Hartley Act. This injunction was vacated, but immediately reentered, on October 3, 1952.

The IAM appealed to the Missouri Supreme Court from the Circuit Court's injunction. That court affirmed the permanent injunction on February 8, 1954, more than a year after the Board found no violation of § 8 (b)(4)(D).

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handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

"(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

"(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

. . . . .

"(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. . . ." 61 Stat. 158, 29 U. S. C. § 187 (a)(1), (2) and (4).

In view of the questions involving unfair labor practices and protected activity which are present in this case, it is not necessary to discuss the possible effect on state jurisdiction of § 303 (a)(1), (2) and (4).

The Missouri Supreme Court held that the IAM's conduct constituted a violation of the State's restraint of trade statute and as such was enjoinable. It referred to the ruling of the Board as a determination that "no labor dispute existed between these parties and that no unfair labor practices were there involved, and the Board, upon such ruling, quashed the notice of the hearing." The court then stated: "The cases relied on by the defendants [the IAM] are largely cases involving existing labor disputes and unfair labor practices. We think those cases are not in point." The court concluded: "A jurisdictional quarrel between two rival labor unions is not a labor dispute within the Norris-LaGuardia Act. . . . the Wagner Act or the Taft-Hartley Act." — Mo. —, —, 265 S. W. 2d 325, 332, 333. The State Supreme Court thus treated the Board's holding as a determination that the allegation on which the injunction issued excluded the basis for a charge of an unfair labor practice under the Taft-Hartley Act.

The principal question that the case raises, whether the state court had jurisdiction to enjoin the IAM's conduct or whether its jurisdiction had been preempted by the authority vested in the National Labor Relations Board, has an importance in the federal-state relations regarding industrial controversies that led us to grant certiorari. 348 U. S. 808.

The Court has had numerous occasions to deal with this delicate problem of the interplay between state and federal jurisdiction touching labor relations. It is helpful to a consideration of this latest phase briefly to summarize where our decisions, under both the Wagner Act and the Taft-Hartley Act, have brought us.

1. The Court has ruled that a State may not prohibit the exercise of rights which the federal Acts protect. Thus, in *Hill* v. *Florida*, 325 U. S. 538, the State enjoined a labor union from functioning until it had complied with certain statutory requirements. The injunction

was invalidated on the ground that the Wagner Act included a "federally established right to collective bargaining" with which the injunction conflicted. *International Union* v. *O'Brien*, 339 U. S. 454, involved the strike-vote provisions of a state act which prohibited the calling of a strike until a specific statutory procedure had been followed. The state act was held to conflict not only with the procedure and other requirements of the Taft-Hartley strike provisions but also with the protection afforded by § 7 of that Act.[4] In *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, the state court issued an injunction under a statute which made it a misdemeanor to interrupt by strike any essential public utility services. It was held that the state statute was invalid in that it denied a right which Congress had guaranteed under § 7 of the Taft-Hartley Act—the right to strike peacefully to enforce union demands for wages, hours and working conditions. Last Term the Court noted in *Garner* v. *Teamsters Union*, 346 U. S. 485, 499, that

> "The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the national Labor Management Relations Act is not to condemn all picketing but only that ascer-

[4] Section 7 provides: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a)(3)." 61 Stat. 140, 29 U. S. C. § 157.

tained by its prescribed processes to fall within its prohibitions. Otherwise, it is implicit in the Act that the pubhc interest is served by freedom of labor to use the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits."

2. A State may not enjoin under its own labor statute conduct which has been made an "unfair labor practice" under the federal statutes. Such was the holding in the *Garner case, supra.* The Court pointed out that exclusive primary jurisdiction to pass on the union's picketing is delegated by the Taft-Hartley Act to the National Labor Relations Board. See also *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U. S. 953; *Building Trades Council* v. *Kinard Construction Co.*, 346 U. S. 933. And in *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501, a picket line established at retail stores to induce the organization of a manufacturer's employees was enjoined by the State as contrary to its pubhc policy.[illegible]

[illegible] The complaint in the state court charged the defendant unions with engaging in "an unlawful conspiracy, combination and agreement, contrary to the common law of the State of California and contrary to the provisions of the Cartwright Act (Stats. 1907, p. 1835, Ch. 530), now constituting Chapter 2 of Part 2, Division 7, of the Business and Professions Code, sections 16720, et seq., to create and carry out restrictions in trade and commerce and to prevent competition in manufacturing, making, transporting, selling and purchasing of bakery products as hereinafter set forth." The state court, however, reasoned that primary picketing was as much a combination in restraint of trade as secondary picketing, and primary picketing had been held legal by numerous state decisions. The court instead enjoined the conduct on the ground that "secondary picketing is contrary to the public policy of this state. . . ." *Capital Service, Inc.* v. *Bakery Drivers Local Union*, Civil No. 595802, Superior Court of California for the County of Los Angeles.

This Court granted a limited certiorari which assumed that exclusive jurisdiction over the subject matter was in the National Labor Relations Board.[8] The Board was allowed to obtain an injunction against enforcement of the conflicting state court injunction.

3. The federal Board's machinery for dealing with certification problems also carries implications of exclusiveness. Thus, a State may not certify a union as the collective bargaining agent for employees where the federal Board, if called upon, would use its own certification procedure. *La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18. The same result is reached even if the federal Board has refused certification, if the employer is subject to the Board's jurisdiction. *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767.

4. On the other hand, in the following cases the authority which the State exercised was found not to have been exclusively absorbed by the federal enactments.

In *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, the State was allowed to enjoin mass picketing, threats of bodily injury and property damage to employees, obstruction of streets and public roads, the blocking of entrance to and egress from a factory, and the picketing of employees' homes. The Court held that such conduct was not subject to regulation by the federal Board, either by prohibition or by protection.

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[8] The Court granted certiorari limited to the following question, propounded by the Court: "In view of the fact that exclusive jurisdiction over the subject matter was in the National Labor Relations Board (*Garner* v. *Teamsters Union*, 346 U. S. 485), could the Federal District Court, on application of the Board, enjoin Petitioners from enforcing an injunction already obtained from the State Court?" 346 U. S. 936.

Inter-Office Communication

From the Office of the General President

To Einar Mohn

Subject Anheuser-Busch

Date July 15, 1954

Einar: Get in touch with John Wilson at St. Louis relative to a meeting next week, on Monday or Tuesday, on a brewery situation. Talk with Kaplan on the phone as to latest developments. I had Wilson here and held a discussion on the subject matter and it is agreed that a meeting between you andhim should be held.

Dave Beck

aw

International Union v. *Wisconsin Employment Relations Board*, 336 U. S. 245, involved recurrent, unannounced work stoppages. The Court upheld the state injunction on the ground that such conduct was neither prohibited nor protected by the Taft-Hartley Act and thus was open to state control.

The Court allowed a State to forbid enforcement of a maintenance-of-membership clause in a contract between employer and union in *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board*, 336 U. S. 301. Since nothing in the Wagner or Taft-Hartley Acts sanctioned or forbade these clauses, they were left to regulation by the State.

Finally, *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656, was an action for damages based on violent conduct, which the state court found to be a common-law tort. While assuming that an unfair labor practice under the Taft-Hartley Act was involved, this Court sustained the state judgment on the theory that there was no compensatory relief under the federal Act and no federal administrative relief with which the state remedy conflicted.

We come, then, to the facts in this case.

Contrary to the assumption of the Missouri Supreme Court, the Board had not ruled that no unfair labor practice was involved in the conduct by the IAM of which respondent complained. The Board had determined only that there was no violation of Subsection (D) of § 8 (b) (4). That was, in fact, the extent of the ruling it was empowered to make, because (D) was the only subsection alleged to have been violated. In its complaint in the state court, however, respondent broadened its allegations to include violations of Subsections (A) and (B).

We do not mean to pass on the question whether the Board, by finding that no violation of (D) was involved,

inferentially ruled that other subsections were or were not violated. The point is rather that the Board, and not the state court, is empowered to pass upon such issues in the first instance. If a ruling on (D) necessarily encompassed a ruling on the other subsections, we would have a different case. But the ruling on (D) was based on the finding that no "particular work" was involved—a phrase of (D) that is absent in (A) and (B). Congress has lodged in the Board responsibility for determining in the first instance whether the same considerations apply to (A) or (B) as apply to (D).

Nor is it within our competence now to determine whether the conduct in controversy is subject to the authority of Subsections (A) or (B). Under the Board's decisions, for example, it may become pertinent whether this is eventually deemed primary pressure, directed at respondent to force insertion of the disputed clause in its contract with the IAM, rather than secondary pressure, aimed at subcontractors to force them to use IAM labor. We are not now ruling on that distinction. However, the point is pertinent to our discussion, because even if it were clear that no unfair labor practices were involved, it would not necessarily follow that the State was free to issue its injunction. If this conduct does not fall within the prohibitions of § 8 of the Taft-Hartley Act, it may fall within the protection of § 7, as concerted activity for the purpose of mutual aid or protection.

Respondent itself alleged that the union conduct it was seeking to stop came within the prohibitions of the federal Act, and yet it disregarded the Board and obtained relief from a state court. It is perfectly clear that had respondent gone first to a federal court instead of the state

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Cf., e. g., *Reilly Cartage Co.*, 110 N. L. R. B. No. 233; *Oil Workers International Union*, 84 N. L. R. B. 315; *International Brotherhood of Teamsters*, 84 N. L. R. B. 360, rev'd *sub nom. International Rice Milling Co.* v. *Labor Board*, 183 F. 2d 21, rev'd 341 U. S. 665.

court, the federal court would have declined jurisdiction, at least as to the unfair labor practices, on the ground that exclusive primary jurisdiction was in the Board.[*] As pointed out in the *Garner* case, 346 U. S., at 491, the same considerations apply to the state courts.

The Missouri Supreme Court oversimplified the factual situation when it called this merely a "jurisdictional quarrel between two rival labor unions." A jurisdictional dispute and a secondary boycott are not necessarily mutually exclusive, as respondent itself showed by alleging, *inter alia*, that this was a secondary boycott prohibited by Missouri common law. Even the Board has not always been consistent in its interpretations of the various subsections of § 8 (b)(4).

Respondent argues that Missouri is not prohibiting the IAM's conduct for any reason having to do with labor relations but rather because that conduct is in contravention of a state law which deals generally with restraint of trade. It distinguishes *Garner* on the ground that there, the State and Congress were both attempting to regulate labor relations as such.

We do not think this distinction is decisive. In *Garner* the emphasis was not on two conflicting labor statutes but rather on two similar remedies, one state and one federal, brought to bear on precisely the same conduct. And in *Capital Service, Inc.* v. *Labor Board*, supra, we did not stop to inquire just what category of "public policy" the union's conduct allegedly violated. Our approach was emphasized in *United Construction Workers* v. *Laburnum Construction Corp.*, supra, where the violent conduct was reached by a remedy having no parallel in, and not in conflict with, any remedy afforded by the federal Act.

[*] See, e. g., *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183, 188-190; *Bakery & Confectionery Workers' International Union* v. *National Biscuit Co.*, 177 F. 2d 684; see also *Garner* v. *Teamsters Union*, 346 U. S. 485, 491.

Moreover, we must not forget that this case is not clearly one of "unfair labor practices." Certainly if the conduct is eventually found by the National Labor Relations Board to be *protected* by the Taft-Hartley Act, the State cannot be heard to say that it is enjoining that conduct for reasons other than those having to do with labor relations. In *Amalgamated Association* v. *Wisconsin Employment Relations Board*, *supra*, the statute was directed at the preservation of public utility services and not at maintenance of sound labor relations, but the State's injunction was reversed. Controlling and therefore superseding federal power cannot be curtailed by the State even though the ground of intervention be different than that on which federal supremacy has been exercised.

By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories the areas that have been preempted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action. Such was the situation in *Garner* v. *Teamsters Union*, *supra*. But as the opinion in that case recalled, the Labor Management Relations Act "leaves much to the states, though Congress has refrained from telling us how much." 346 U. S., at 488. This penumbral area can be rendered progressively clear only by the course of litigation. Regarding the conduct here in controversy, Congress has sufficiently expressed its purpose to bring it within federal oversight and to exclude state prohibition, even though that with which the federal law is concerned as a matter of labor relations be related by the State to the more inclusive area of restraint of trade.

We realize that it is not easy for a state court to decide, merely on the basis of a complaint and answer, whether the subject matter is the concern exclusively of the federal Board and withdrawn from the State. This is particularly true in a case like this where the rulings of the Board are not wholly consistent on the meaning of the sections outlawing "unfair labor practices," and where the area of free "concerted activities" has not been clearly bounded. But where the moving party itself alleges unfair labor practices, where the facts reasonably bring the controversy within the sections prohibiting these practices, and where the conduct, if not prohibited by the federal Act, may be reasonably deemed to come within the protection afforded by that Act, the state court must decline jurisdiction in deference to the tribunal which Congress has selected for determining such issues in the first instance.[8]

The state decree granting the permanent injunction found that "Defendants [IAM's] picket line was so placed and maintained that it prevented the movement of railroad cars into and out of plaintiff's [respondent's] premises by a common carrier without danger of physical injury to the pickets, and movement of the cars was stopped for that reason." The Missouri Supreme Court stated that "the transportation into and out of the plant was stopped 'because it endangered their [presumably the pickets'] lives and limbs; . . . .'" We do not read this as an unambiguous determination that the IAM's conduct amounted to the kind of mass picketing and overt threats

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[8] The Missouri Supreme Court relied upon *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, for the proposition that a state court retains jurisdiction over this type of suit. But *Giboney* was concerned solely with whether the State's injunction against picketing violated the Fourteenth Amendment. No question of federal pre-emption was before the Court; accordingly, it was not dealt with in the opinion.

of violence which under the *Allen-Bradley Local* case give the state court jurisdiction. It does not preclude the conclusion that the transportation was stopped for fear of crossing an otherwise peaceful picket line. In any event, the state injunction enjoined all picketing.

Reversed and remanded.

MR. JUSTICE BLACK concurs in the result.

MR. JUSTICE HARLAN took no part in the consideration or decision of this case.

ADMINISTRATIVE FILE ✓

Anheuser-Busch
Legislation-California
X

Inter-Office Communication

From the Office of the General President

Date January 11, 1955

To Mr. Beck

Subject

I reached John Wilson and he was very pleased with your message re the all-out program. He explained that draft beer isn't sold in California for the reason that it is only $3\frac{1}{2}\%$ beer and the beer in containers is 5% and that, because of the difference in alcoholic content, the public thinks that draft beer isn't worthwhile. It is the desire of Anhauser-Busch, and they have people in California working on it now, to bring about state legislation increasing the $3\frac{1}{2}\%$ to 5% in draft beer. He asked if it would be all right to have their man contact George Leonard in connection with this program and I said I thought there would be no objection. If you feel otherwise, we can advise him in Miami Beach.

annw

From the Desk of Ann Watkins

To: Mr. Beck

I talked to John Wilson in St. Louis.
He will telephone here the first of
the week to let me know what Fred
Huenergarth says about your suggestion
of giving membership to these handlers
in our St. Louis local union.

ahnw.

JOHN L. WILSON
VICE PRESIDENT AND
FINANCIAL OFFICER

Anheuser-Busch, Inc.
EXECUTIVE OFFICES
ST. LOUIS 18, MO., U.S.A.

ADMINISTRATIVE FILE
Anheuser-Busch, Inc.
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X

November 5, 1954

Mr. Dave Beck
100 Indiana Avenue, N.W.
Washington 1, D. C.

Dear Dave:

Attached hereto you will find self-explanatory letter written by Fred Huenergarth who is in charge of our Clydesdale horses.

I am sure that you do not want to write me on this, but if there is anything you can advise, please call me, or have Miss Watkins call me.

Please return the attached letter when it has served your purpose.

With best regards, I am

Sincerely yours,

Enc.

DEC 10 1954

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ANHEUSER-BUSCH, INC.

INTER-OFFICE CORRESPONDENCE

(LIMIT THIS LETTER TO ONE SUBJECT)

Grant's Farm - Affton, Mo.
TOWN — TERRITORY

TO Mr. John L. Wilson — DATE November 1, 1954

FROM Fred Huenergarth — SUBJECT

MESSAGE

We are at the present time in the process of making up the schedules that the Clydesdale horses will follow in the year 1955.

At the request of the Sales Department, we are planning a trip through the northwestern part of the United States beginning on about May 2, and ending at the Pomona Fair in Pomona, California in the fall of the year. This trip will, of course, take us through the state of Washington. The last time we were in Washington, in 1950, the men on our team encountered local opposition from Union members. We were, however, able to obtain temporary Union buttons for our men to wear. (Our team personnel is non-union.)

In order to avoid any incident with the Unions in the state of Washington, we contacted our District Manager in the state of Washington, Mr. Bruce Hill, and inquired if there is anything that might be done to obtain temporary Union cards for our men. We will quote Mr. Hill's wire:

> "Discussed situation with Seattle Distributor whose contacts are favorable in this situation. He is contacting local organisational representatives in Seattle to smooth path, and his suggestion is that Mr. Wilson contact Mr. Beck in person regarding O.K., thus working from both ends at the same time. Bruce Hill."

We would appreciate whatever help you might be able to give us in obtaining a permit. On the other hand, if you prefer to stay out of the state of Washington in order to avoid any difficulties with the Unions, please advise.

F Huenergarth
Fred Huenergarth

REPLY

ON ALL REPLIES BE CAREFUL TO CHECK (V) NAME OR DEPARTMENT FOR WHOM REPLY IS INTENDED

ADMINISTRATIVE FILE
Anheuser-Busch
X
X

Anheuser-Busch, Inc.

ST. LOUIS 18, MO., U.S.A.

JOHN L. WILSON
VICE PRESIDENT AND
FINANCIAL OFFICER

July 26, 1954

Mr. David Beck
100 Indiana Avenue, N.W.
Washington 1, D. C.

Dear Dave:

In line with our conversation the other day, I am quoting herewith from a bulletin put out by the United States Brewers Foundation, Inc.:

"Employment by a brewing company brings the worker the sixth highest average weekly wage paid in any manufacturing industry, according to the June report on Employment and Earnings issued this week by the Department of Labor. This survey, covering information for April, shows that the malt beverages' average is topped by only five other manufacturing industries -- newspapers, miscellaneous publishing and printing, petroleum refining, flat glass producers, and machine-tools accessories makers. Yet, of all these, the brewing industry worker enjoyed a greater swelling of his pay envelop as against a year ago -- his average jumped $7, while workers in the other industries got smaller raises or, as in the machine-tools category, averaged $3.86 less than in April, 1953.

"Another Department of Labor release, dated June 30, reported productivity (output-per-manhour) in the malt beverage industry rose only 1.6 per cent in 1952 over the preceding year and put 8.4 per cent since the end of World War II, although as recently as last December spokesmen for the Bureau of Labor Statistics were predicting the median average for manufacturing industries was expected to be about plus-four per cent per year."

Looking forward to seeing you when you return, I

Very truly yours,

John

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ADMINISTRATIVE FILE

Anheuser-Busch

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Inter-Office Communication

From the Office of the General President

Date July 15, 1954

To Einar Mohn Subject

Einar: Get in touch with John Wilson at St. Louis relative to a meeting next week, on Monday or Tuesday, on a brewery situation. Talk with Kaplan on the phone as to latest developments. I had Wilson here and held a discussion on the subject matter and it is agreed that a meeting between you and him should be held.

aw

Dave Beck